

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**GILBERT MEDICAL BUILDING LLC,)
and AKY MD GILBERT, LLC,)**

Plaintiffs,)

v.)

CIV-20-896-R

**TRAVELERS CASUALTY)
INSURANCE COMPANY OF)
AMERICA,)**

Defendant.)

ORDER

Plaintiff filed a Motion to Quash and For Protective Order Regarding Expert Howard Altschule (Doc. No. 39). Defendant responded in opposition to the motion. (Doc. No. 41). Having considered the parties' submissions, the Court finds as follows.¹

The parties have agreed to conduct the deposition of Plaintiff's meteorological expert, Howard Altschule, on December 29, 2021. Defendant requested that the deposition be conducted in person; however, Mr. Altschule has advised Plaintiff's counsel that he is only agreeing to depositions via Zoom at this time. The basis for Mr. Altschule's limitation is the ongoing COVID 19 crisis and the fact that he has an immediate family member who is immunocompromised. Plaintiff further notes that defense counsel will be required to travel to attend the deposition in person, thereby potentially increasing their risk of exposure, and consequently the potential exposure of Mr. Altschule. Defendant objects,

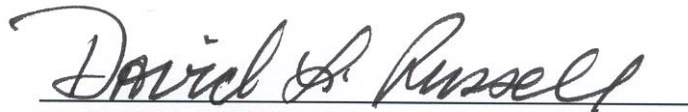
¹ The Court rejects Defendant's contention that Plaintiff lacks standing to challenge the deposition of its listed expert.

noting that in person depositions are preferable, generally, and where, as here, the deposition is expected to be document intensive, online depositions are more difficult.

Although the Court sympathizes with Mr. Altschule's position, the Court finds that in-person deposition is appropriate. However, the conditions of such deposition, with regarding to masks, vaccine status, and COVID-19 testing may be set by Plaintiff's expert.² The location of the in-person deposition shall be such that Mr. Altschule shall not be required to be within six feet of any other participant.³

For the reasons set forth herein, Plaintiff's Motion to Quash (Doc. No. 39) is DENIED pursuant to the conditions set forth herein.

IT IS SO ORDERED this 22nd day of December 2021.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

² According to Defendant's response, both Mr. Downs and Mr. Daniel are fully vaccinated, with booster vaccines. Mr. Altschule may require that any other persons present are also vaccinated. However, the Court anticipates that he will not establish conditions that render an in-person deposition impossible.

³ To the extent Defendant intends to provide documents to Mr. Altschule during the deposition it may find it advantageous to provide those documents electronically to permit the expert to print the documents, reducing the need for indirect contact.